

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

WILHEN HILL BARRIENTOS, et al.,

Plaintiffs,

v.

CORECIVIC, INC.,

Defendant.

Civil Action No. 4:18-cv-00070-CDL

**DEFENDANT’S MOTION FOR PAYMENT OF EXPERT FEES**

Defendant, CoreCivic, Inc. (“CoreCivic”), through counsel, moves pursuant to Fed. R. Civ. P. 26(b)(4)(E) for an order requiring Plaintiffs to pay the full hourly rate charged by Joseph Penn, M.D., CoreCivic’s mental health expert in this matter.

CoreCivic disclosed Dr. Penn as its mental health expert on February 2, 2022, including Dr. Penn’s fee schedule, which clearly stated that Dr. Penn charges \$1,000 per hour for deposition and trial testimony.<sup>1</sup> Two weeks later, on February 16, 2022, Plaintiffs served a subpoena for Dr. Penn’s deposition and production of documents. After the parties agreed on a date for the deposition, Plaintiffs objected on February 24, 2022 for the first time to Dr. Penn’s hourly rate, stating they would only agree to pay Dr. Penn \$400 per hour and that they intended to take five to seven hours for the deposition at that rate, but only after CoreCivic raised the issue

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<sup>1</sup> Plaintiffs were already aware of Dr. Penn’s hourly rate, as some of the attorneys representing Plaintiffs in this case also represent the plaintiffs in *Jensen, et al. v. Shinn, et al.*, No. CV-12-00601-PHX-ROS, D. Ariz., in which the Arizona Department of Corrections, Rehabilitation and Reentry retained Dr. Penn as its mental health expert. (Ex. 1, Dec. of Jacob B. Lee, ¶ 12.) There, the plaintiffs deposed Dr. Penn on October 26 and November 17, 2021, only objecting months after the depositions to his hourly rate, which was also \$1,000. (Ex. 1 at ¶ 13; Ex. 2, Dec. of Joseph V. Penn, MD CCHP FAPA, ¶¶ 52–54.) The issue has not yet been resolved, and Dr. Penn has not been paid for his time in that case. (Ex. 1 at ¶ 14; Ex. 2 at ¶ 54.)

of Dr. Penn's hourly rate and asked that Plaintiffs agree to pre-pay him for the deposition. Had CoreCivic not done so, this issue likely would not have come up until well after Dr. Penn had already sat for a lengthy deposition and requested payment for his time, as it did in *Jensen*.

On March 6, 2022, CoreCivic again requested that Plaintiffs agree to pay Dr. Penn's full hourly fee within 30 days after the deposition and informed Plaintiffs that if they would do so, CoreCivic would not object to producing Dr. Penn for his deposition. If they would not, however, the deposition would need to be postponed pending resolution of this issue with the Court. Plaintiffs responded on March 7, 2022. Although they would not agree to postpone the deposition until the fee issue is resolved, upon further negotiation, they did agree to promptly pay Dr. Penn \$595 per hour upon receipt of a W-9 and an invoice as an undisputed portion of his fee, with the parties to litigate payment of the remainder of the fee.

Dr. Penn is entitled to be paid his full fee in connection with his deposition. CoreCivic therefore respectfully requests that the Court enter an Order requiring Plaintiffs to pay the remainder of Dr. Penn's full hourly rate (i.e., \$405 per hour) for all time spent in his deposition.

Dated: March 7, 2022

Respectfully submitted,

s/ Jacob B. Lee

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Attorneys for Defendant CoreCivic, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of March, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

N/A

s/ Jacob B. Lee

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